IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 26TH SEPTEMBER 2006 / 4TH ASWINA 1928

WP(C).No. 22778 of 2006(J)

PETITIONER:

ABOOBACKER, AGED 47 YEARS,
S/O.V.MOHAMMED HAJI, OGES BAKERY,
NILAMBUR, RESIDING AT VALIYILLATH HOUSE,
VELIMUKKU AMSOM, CHERUVANNUR DESOM,
TIRURANGADI TALUK.

BY ADV. SRI.K.SHIBILI NAHA

RESPONDENTS:

1.THE SECRETARY, NILAMBUR GRAMA
PANCHAYAT, NILAMBUR, MALAPPURAM DISTRICT.

2.P.K.KUNHALIKUTTY, S/O.PANDIKKADAVATH
ABDULLAKKUTTY, NEAR JUMA MASJID,
KARATHODE, OORAKAM MELMURI AMSOM DESOM,
THIRUVANGAD TALUK.

3.SARADA THEKKETHIL, D/O.RAMAN PILLAI,
MANALODY, NILAMBUR AMSOM DESOM,
NILAMBUR TALUK.

4.STATE OF KERALA, REP.BY THE SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.K.M.SATHYANATHA MENON
R3 BY SRI.A.K.MADHAVAN UNNI
SRI.S.RAMACHANDRAN
R4 BY GOVT. PLEADER MR.MATHEW G.VADAKKEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.22778 of 2006

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Dated: 26th September, 2006

JUDGMENT

The petitioner claims that he is a tenant by holding over in a building which originally belonged to the 2nd respondent and situated within the area of the 1st respondent-Nilambur Grama Panchayat. According to him, room numbers 1 to 15 of his buillding in a shopping complex by name 'Marva Complex' belonging to the 2nd respondent was leased out by the 2nd respondent on rent to one Moideenkunhi and Ext.P1 dated 2.3.1995 is copy of the rental agreement. There was an oral agreement that the tenure of the lease will be 11 months and even after the expiry of the tenure the lease has been extended orally by mutual consent. The rent agreed upon used to be paid by cash cheque to the 2nd respondent prominently. The petitioner submits that he submitted Ext.P2 application for renewal of licence for the year 2006-07 to the 1st respondent-Panchayat. But the Panchayat by Ext.P3 order rejected the application on the ground that the petitioner had not produced the rental agreement/consent from the present owner of the building. The Panchayat has stated in Ext.P3 that the rental agreement relied on by the petitioner was one executed in favour of the previous owner of the building and that the third respondent who is the present owner had informed the

Panchayat not to grant any renewal of licence to the petitioner since it was he who was having ownership over the building. The petitioner contends that he was totally unaware regarding the transfer of ownership in favour of the third respondent. He points out that the previous landlord, the 2nd respondent himself together with his son had been creating all sorts of difficulties to the petitioner in the matter of peaceful enjoyment of the rooms leased out to him. When an attempt was made for removing the roofing of the building and to demolish the wall, the petitioner approached the Accommodation Controller who passed Ext.P4 order. The petitioner submits that he has already approached the local Munsiff's Court and in O.S.No.153/05 the learned Munsiff has already passed an order of temporary injunction against the 2nd respondent and his men from forcefully evicting the petitioner from the tenanted premises. The contention of the third respondent that he is the landlord can never be correct. Even if that contention is correct, then also the petitioner being a tenant by holding over is entitled to continue possession and the Panchayat is not entitled to reject his application for renewal of licence. Relying on the judgment of this court in **Marimuthu v. Director General of Police** (1999(3) KLT 662) and on the various

grounds raised in the Writ Petition the petitioner prays that Ext.P3 be quashed and that the Panchayat be directed to consider Ext.P2 application for licence without insisting upon production of written consent of the owner. He also prays for a declaration that he is entitled for renewal of licence.

2. The third respondent has filed a detailed counter affidavit wherein she contends that as per registered sale deed No.761/06 of Nilambur Sub Registry she is the owner of the property. It is further contended that without a valid licence from the Panchayat the petitioner is conducting bakery business in the rooms. The maintainability of the Writ Petition is questioned on the reason that the petitioner has not invoked his statutory remedies against the order rejecting the application for renewal of licence. It is contended further that the term of the lease in favour of the petitioner expired on 16.2.2006 and it is on such expiration that the third respondent purchased the property expecting that the petitioner will vacate the premises without causing any trouble. It is pointed out that the petitioner has three other bakeries in the town and is deriving huge income from those bakeries. Referring to Rule 26 of the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades

and Factories) Rules, 1996, it is contended that the petitioner is guilty of having conducted trade without obtaining licence. It is further contended that on 23.2.2006 the petitioner closed his business and put the premises locked. Shutters were also seen closed. It could however be found that some extensive works were being carried out so as to alter the condition of the building materially keeping the shutters closed. Even the entry of the third respondent-owner for inspection was prevented. In spite of the objections of the third respondent, the petitioner succeeded in altering the building and in reopening his business. It was in that context that the third respondent filed petition before the Panchayat and objected to renewal of licence. A lawyer notice Ext.R3(a) also has been issued on 14.8.2006. To that notice no reply is sent so far by the petitioner. Denying all the averments in the writ petition the counter affidavit concludes by stating that allowing the Writ Petition will be placing a premium on honesty. The petitioner is disentitled to get the reliefs sought for.

3. The Panchayat has also filed a counter affidavit. It is contended therein that in Ext.P2 application for licence, the room number was shown as Ward-I/428. But in the application for licence

under the Food Adulteration Act as evident from Ext.P2 the room number was shown as Ward-I/427. On enquiry it is understood that in room number Ward-I/427 another person by name Paloly Mohammed is conducting some other business. According to this counter affidavit, it was necessary that the petitioner submitted consent from the present owner of the building for considering his application for renewal of licence. Since the application was not in conformity with the provisions of law and was not accompanied by the consent of the present landlord, the same was not favourably considered.

4. Very elaborate submissions were addressed before me by Mr.K.Shibili Naha, learned counsel for the petitioner, Mr.A.K.Madhavan Unni, learned counsel for the third respondent and Mr. K.M.Sathyanatha Menon, learned counsel for the Panchayat. Mr.Shibili Naha would place strong reliance on the judgment of this court in **Marimuthu v. Director General of Police** (supra).

5. Having regard to the rival submissions addressed before me and also the principles laid down by the Division Bench of this court in **Marimuthu v. Director General of Police** (supra), I am of the view that the Writ Petition can be disposed of with the following directions:

The Panchayat will take a decision on Ext.P1 application in accordance with law, after hearing the petitioner and the third respondent, the present landlady, construing Ext.P1 application as an application for fresh licence. The Panchayat will take a decision on Ext.P1 at the earliest and at any rate within three weeks of receiving a copy of this judgment. Till then the Panchayat will not interfere with the continuance of the petitioner's business by him.

The Writ Petition will stand disposed of as above.

srd **PIUS C.KURIAKOSE, JUDGE**